

A. G. Contract No. KR920034TRD  
ECS File: JPA 92-05  
Project: RRP-500-7(12)P  
TRACS: 5007 MA PHX SR044 01C  
Section: Madison Avenue & ATSFRC

61652

INTERGOVERNMENTAL AGREEMENT  
BETWEEN  
THE STATE OF ARIZONA  
AND  
THE CITY OF PHOENIX

THIS AGREEMENT is entered into 2 June, 1992,  
pursuant to Arizona Revised Statutes, Sections 11-951 through  
11-954, as amended, between the STATE OF ARIZONA, acting by and  
through its DEPARTMENT OF TRANSPORTATION (the "State") and the  
CITY OF PHOENIX, acting by and through its City Council (the  
"City").

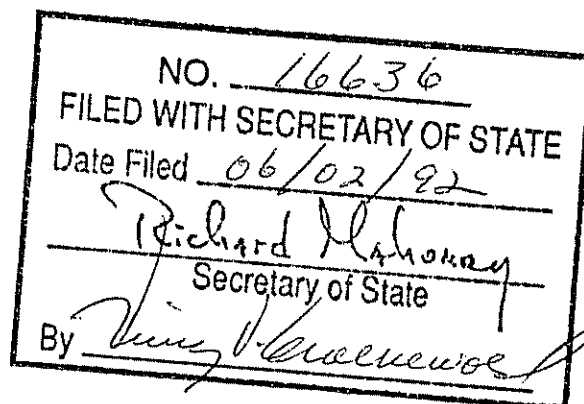
I. RECITALS

1. The State is empowered by Arizona Revised Statutes  
Section 28-108 to enter into this agreement and has by  
resolution, a copy of which is attached hereto and made a part  
hereof, resolved to enter into this agreement and has delegated  
to the undersigned the authority to execute this agreement on  
behalf of the State.

2. The City is empowered by Arizona Revised Statutes  
Section 48-572 and City Charter Chapter 2 Section 2 to enter  
into this agreement and has by resolution, a copy of which is  
attached hereto and made a part hereof, resolved to enter into  
this agreement and has authorized the undersigned to execute  
this agreement on behalf of the City.

3. The Arizona Corporation Commission is empowered by  
Arizona Revised Statutes Section 40-337 to participate in the  
funding of this project, and has authorized funds for this  
project.

4. Congress has authorized appropriations for the  
erection of automatic warning signals, automatic gate arms,  
plank crossings, pavement markings, and other appurtenances.



5. Such project within the boundary of the City has been selected by the City; the field survey of the project has been completed; and the plans, estimates and specifications have been prepared and, as required, submitted to the Federal Highway Administration ("FHWA") for its approval.

6. The only interest of the State in the project is in the acquisition of federal funds for the use and benefit of the City by reason of federal law and regulations under which funds for the project are authorized to be expended.

7. The work embraced in this agreement and the estimated cost are as follows:

Furnish and install Flashing Light Signals

Furnish & Install Flashing	
Light Signals (ATSF)	= \$ 10,325.00
Preliminary & Const. Engineering	= \$ 2,000.00
Subtotal	= \$ 12,325.00
Federal Aid Funds at 90%	= \$ 11,092.00
AZ Corp. Commission Funds @ 10%	
of \$ 12,325.00	= \$ 1,233.00
City of Phoenix funds	= \$ 0.00

THEREFORE, in consideration of the mutual covenants expressed herein, it is agreed as follows:

II. SCOPE OF WORK

1. The State shall submit a program containing the aforementioned project to FHWA with the recommendation that it be approved for construction.

a. If such project is approved for construction by FHWA and the funds are available for construction of the project, the State with the aid and consent of FHWA will authorize the Railroad Company to proceed with the work covered by the State-Railroad Agreement and will request the maximum federal funds available.

b. Should some unforeseen conditions or circumstances increase the cost of said work required by a change in the extent or scope of the work called for in this agreement, the State shall not be obligated to incur any expenditure in excess of the amount of the City's deposit unless and until so authorized in writing by the City.

2. The City shall acquire, without cost to the State, the necessary right-of-way and hereby certifies that all necessary rights-of-way have been acquired.

3. The City shall remove from the proposed right-of-way all obstructions or unauthorized encroachments of whatever nature, either above or below the surface of the roadway, and hereby certifies that all obstructions and encroachments have been removed therefrom.

4. The City shall not permit or allow any encroachments, except those authorized by permit, upon, or private use of, the right of way. In the event of any unauthorized encroachment or improper use, the City shall take all necessary steps to remove or prevent any such encroachment or use; failing in which the State shall have the right to proceed with the removal or prevention thereof, the cost of such removal or prevention to be borne by the City.

5. Upon completion of construction, the City shall provide for, at its own cost and as an annual item in its budget, proper maintenance; such maintenance (exclusive of maintenance by the Railroad Company of its facilities) to include, but not be limited to, traffic signals, signs, islands, curbs and markings necessary for the purpose of regulating, warning and guiding traffic.

6. The City shall mark and sign railway-highway grade crossings in accordance with the requirements of the current edition of the Manual on Uniform Traffic Control Devices for Streets and Highways.

7. By such regulation as it may by ordinance provide, the City shall regulate parking and not permit vehicles to be left on the street in any manner other than at and parallel with the curb and to restrict parking so as to prevent conflicts with moving traffic.

### III. MISCELLANEOUS PROVISIONS

1. The State assumes no financial obligation or liability under this agreement. The City assumes full responsibility for the design, plans, specifications, reports, the engineering in connection therewith and the construction of the improvements contemplated, cost over-runs and construction claims. It is understood and agreed that the State's participation is confined solely to securing federal aid; that any damages arising from carrying out, in any respect, the terms of this agreement or any modification thereof, shall be

solely the liability of the City and that the City hereby agrees to save and hold harmless and indemnify from loss the State, any of its departments, agencies, officers or employees from any and all cost and/or damage incurred by any of the above and from any other damage to any person or property whatsoever, which is caused by any activity, condition, or event arising out of the performance or nonperformance of any provisions of this agreement by the State, any of its departments, agencies, officers and employees, the City, any of its agents, officers and employees, or any of its independent contractors. Costs incurred by the State, any of its departments, agencies, officers or employees shall include in the event of any action, court costs, expenses of litigation and attorneys' fees.

2. The cost of the construction and construction engineering work covered by this agreement is to be borne by FHWA, Arizona Corporation Commission and the City, each in the proportion prescribed or as fixed and determined by FHWA as stipulated in this agreement. Therefore, in the event that funds to match federal funds are not made available by the Corporation Commission, the City agrees to furnish and provide the State with City funds in an amount equal to the difference between the total cost of the work provided for in this agreement and the amount of federal aid received.

3. This agreement shall remain in force and effect until completion of the work herein embraced; provided, however, that any provisions in this agreement for maintenance shall be perpetual.

4. This agreement shall become effective upon filing with the Secretary of State.

5. This agreement may be cancelled in accordance with Arizona Revised Statutes Section 38-511.

6. The provisions of Arizona Revised Statutes Section 35-214 are applicable to this contract.

7. In the event of any controversy which may arise out of this agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes Section 12-1518 (B) and (C).

8. All notices or demands upon any party to this agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Arizona Department of Transportation  
Joint Project Administration  
205 South 17 Avenue, Room 222E, Mail Drop 616E  
Phoenix, AZ 85007

City of Phoenix  
City Manager  
251 West Washington Street  
Phoenix, AZ 85003

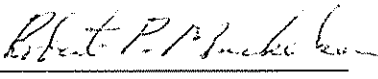
9. Attached hereto and incorporated herein is a copy of the written determination of each party's legal counsel that the parties are authorized under the laws of this state to enter into this agreement and that the agreement is in proper form.

IN WITNESS WHEREOF, the parties have executed this agreement the day and year first above written.

CITY OF PHOENIX, a Municipal  
Corporation, FRANK FAIRBANKS,  
City Manager

STATE OF ARIZONA  
Department of Transportation

By   
JAMES H. MATTESON, P.E.  
Street Transportation Director

By   
ROBERT P. MICKELSON  
Deputy State Engineer

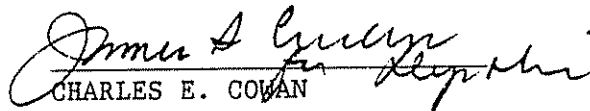
ATTEST:

By   
VICKY MIEL  
City Clerk

RESOLUTION

BE IT RESOLVED on this 6th day of January 1992, that I, CHARLES E. COWAN, as Director of the Arizona Department of Transportation, have determined that it is in the best interests of the State of Arizona that the Department of Transportation, acting by and through the Highways Division, to enter into an agreement with the City of Phoenix for the purpose of defining responsibilities for the construction and maintenance of railroad crossing improvements on Madison Avenue at the ATSFRR.

Therefore, authorization is hereby granted to draft said agreements which, upon completion, shall be submitted for approval and execution by the Deputy State Engineer.

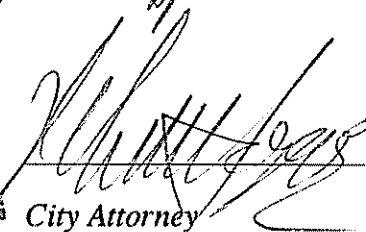
  
CHARLES E. COWAN  
Director

JPA 92-05

APPROVAL OF THE PHOENIX CITY ATTORNEY

*I have reviewed the above referenced proposed intergovernmental agreement, between the DEPARTMENT OF TRANSPORTATION, HIGHWAYS DIVISION and the CITY OF PHOENIX and declare this agreement to be in proper form and within the powers and authority granted to the City under the laws of the State of Arizona.*

DATED this 7<sup>th</sup> day of April, 1991.

  
ACTING City Attorney

1979j



STATE OF ARIZONA

OFFICE OF THE ATTORNEY GENERAL

1275 WEST WASHINGTON, PHOENIX 85007

GRANT WOODS  
ATTORNEY GENERAL

May 15, 1992

MAIN PHONE : 542-5025  
TELECOPIER : 542-4085

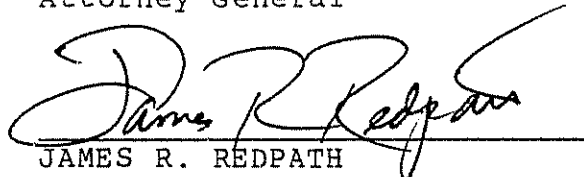
INTERGOVERNMENTAL AGREEMENT  
DETERMINATION

A. G. Contract No. KR92-0034-TRD, an agreement between public agencies, has been reviewed pursuant to A.R.S. §11-952, as amended, by the undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining parties, other than the State or its agencies, to enter into said agreement.

DATED this 15<sup>th</sup> day of May, 1992.

GRANT WOODS  
Attorney General

  
JAMES R. REDPATH  
Assistant Attorney General  
Transportation Section

JRR:ls  
7333G/68



GREEN — CITY CLERK  
 WHITE — CITY ATTORNEY  
 BLUE — CITY MANAGER  
 PINK — ACCOUNTS NOTIFICATION  
 CANARY — DEPARTMENT NOTIFICATION  
 BUFF — DEPARTMENT FILE COPY

CITY OF PHOENIX, ARIZONA

## REQUEST FOR COUNCIL ACTION

ALL RCA'S MUST BE IN THE CITY MANAGER'S OFFICE BY NOON ON THE TUESDAY SEVEN DAYS BEFORE THE FORMAL CITY COUNCIL MEETING WITH ALL REQUIRED SIGNATURES. COMPLETE THIS FORM PER M.P. 1906

1 To the City Manager:

DATE February 12 19 92

THE FOLLOWING COUNCIL ACTION IS HEREBY REQUESTED: ☐ ORDINANCE ☐ RESOLUTION ☒ FORMAL ACTION

AGREEMENT BETWEEN ARIZONA DEPARTMENT OF TRANSPORTATION (ADOT) AND  
 CITY OF PHOENIX FOR IMPROVEMENTS TO THE ATSF RAILROAD  
 CROSSING AT (7TH AVENUE AND MADISON)  
 (COUNCIL DISTRICT 7 AND 8)

Request to authorize the City Manager to enter into an agreement with the State of Arizona through its Department of Transportation to furnish and install Flashing Light Signals with Automatic Gates at the railroad crossing at 19th Avenue and Madison Street. The work will be done by the Atchinson, Topeka, and Santa Fe Railroad Company using Federal Funds and Arizona Corporation Commission funds. There will be no cost to the City of Phoenix for the construction of the signals and gates.

The City shall provide all right-of-way for this project at no cost to the State. The City will also remove all obstructions and encroachments from the proposed right-of-way at no cost to the State. Current plans indicate that no additional right-of-way is required for this project.

Upon completion of construction the City shall provide for maintenance of items such as traffic signals, signs, islands, curbs and markings necessary for the purpose of regulating, warning and guiding traffic. The City shall also mark and sign railroad-highway grade crossings in accordance with the requirements of the current edition of the Manual on Uniform Traffic Control Devices for Streets and Highways.

2 Bid Bond (Surety) Required?

☐ Yes ☐ No

3 Bond submitted by low bidder?

☐ YES ☐ NO

4 Performance Bond (Surety) Required?

\$

5. SOURCE OF FUNDS:

INDEX CODE

SUBJECT

PROJECT

None Required

☐ BUDGETED ☐ SUPPLEMENTAL ☐ CONTINGENCY

12 Recommended by:

Department/  
FunctionDivision Head  
SignatureDepartment Head  
Signature

6 Emergency Clause?

☐ YES ☐ NOIF LESS THAN FIVE COUNCIL  
MEMBERS ARE PRESENT:☐ CONTINUE ONE WEEK☐ ADOPT WITHOUT EMERGENCY  
CLAUSE

7 Requested by:

Phone #

Bortfeld 55817

8 WP Document #:

9 Desired Agenda Date:

2/18/92 or ASAP

10 Formal contract required?

☐ Yes ☐ No

Previous contract #

11 Requisition #:

13 Approved as to availability of funds:

MANAGEMENT &amp; BUDGET DIRECTOR

14 Approved:

15 Council action taken:

CITY MANAGER

Formal action:

RESOLUTION NO

ORDINANCE NO

DATE

19

CONTRACT NO

2/19

92

F-2766/4404